

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**July 12, 2005**

**IN RE:**

**ENTERGY ARKANSAS, INC. REQUEST FOR APPROVAL  
TO ENTER INTO CERTAIN FINANCING  
TRANSACTIONS BETWEEN JANUARY 1, 2004 AND  
DECEMBER 31, 2006**

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**DOCKET NO.  
03-00486**

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**ORDER CLARIFYING FINANCING AUTHORITY**

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This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on April 18, 2005 to consider the *Motion to Re-Open Docket for Clarification of Financing Authorization* ("Motion") filed by Entergy Arkansas, Inc. ("EAI") on April 4, 2005.<sup>1</sup> EAI sought clarification that the financing authorizations set forth in the *Order Approving Financing Transactions*, dated October 31, 2003, authorized the issuance of one of more series of \$25 Par Value Preferred Stock ("25 Par Value Stock" or "Stock") as the terms were proposed to be modified as described in EAI's *Motion*.

**Statutory Framework**

Tenn. Code Ann. § 65-4-109 provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the [TRA] for such proposed issue. It shall be the duty of the [TRA] after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the [TRA].

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<sup>1</sup> EAI submitted as its *Motion* a copy of its motion for similar approval filed with the Arkansas Public Service Commission

Pursuant to this statutory authority, the TRA must determine whether the proposed transactions are in accordance with law and that the stated purpose meets with the TRA's approval.

### **Background**

EAI is an Arkansas corporation with its principal place of business in Little Rock, Arkansas. EAI owns distribution lines that are located in a small portion of the State of Tennessee serving thirty-eight retail customers situated wholly on the west side of the main channel of the Mississippi River.

EAI filed its initial *Application* on August 26, 2003,<sup>2</sup> seeking authorization, pursuant to Tenn. Code Ann. § 65-4-109 (2004), to enter into certain financing transactions between January 1, 2004 and December 31, 2006. EAI proposed to apply the net proceeds of these transactions to pay all or a portion of its short-term indebtedness, to provide funds for retirement of a portion of its outstanding securities at or prior to maturity through redemptions, tender offers, open market or negotiated purchases, or otherwise. In addition, EAI stated that the net proceeds would also be used for general corporate purposes such as funding capital expenditures and working capital needs and the financing of unanticipated events such as emergency restoration.

During a Special Authority Conference held on October 31, 2003, the Directors found that the transactions proposed by EAI were for a proper purpose and did not violate Tennessee laws. Based on these findings, the Directors voted unanimously to approve EAI's *Application*.<sup>3</sup>

### **EAI's Motion**

On April 4, 2005, EAI filed its *Motion* to reopen this Docket for the purpose of clarifying that its issuance of shares of \$25 Par Value Stock, as its terms were proposed to be modified, would

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<sup>2</sup> EAI submitted as its *Application* a copy of its application for similar approval filed with the Arkansas Public Service Commission

<sup>3</sup> See *Order Approving Financial Transactions* (October 31, 2003).

be regarded by the Authority as being approved for issuance in accordance with the procedures set forth in the *Application* previously approved in this Docket. According to the *Motion*, EAI would propose to its common shareholder an amendment to EAI's Amended and Restated Articles of Incorporation that would modify the terms of EAI's existing class of \$25 Par Value Stock. EAI asserted that no shares of EAI's \$25 Par Value Stock were outstanding, and therefore no current shareholders would be adversely affected by the proposed amendment. The holders of EAI's existing classes of \$100 Par Value and of Class A Preferred Stock would not be entitled to vote on the proposed amendment because the terms of those classes would not be modified.

EAI reported in its *Motion* that the Security Exchange Commission ("SEC") rescinded its Statement of Policy for preferred stock which required, in pertinent part, that shares of preferred stock be entitled to consent to the issuance or assumption by a regulated utility of various types of unsecured debt if certain conditions were not met ("Covenant" or "Unsecured Debt Covenant"). The SEC stated that its Statement of Policy had not kept pace with changes in the securities markets and hindered the ability of regulated utilities to raise capital. According to EAI, by removing the Unsecured Debt Covenant with respect to the \$25 Par Value Stock, EAI would have an enhanced ability to access the capital markets and take advantage of favorable market rates as they develop, thereby serving the interests of its customers.

EAI asserted that the proposed amendment to the \$25 Par Value Stock would not change EAI's authorized capital stock, and the Stock would retain the same rank and relative rights of the other classes of EAI's preferred stock. The Stock would differ slightly from other preferred stock however, because the Unsecured Debt Covenant would not apply to the \$25 Par Value Stock while the other classes of preferred stock would remain subject to the Covenant. EAI recognized that this difference may affect whether the \$25 Par Value Stock would continue to be deemed substantially identical to the other classes of preferred stock, as EAI previously represented in the *Application*

approved in this Docket. EAI, however, asserted that the financial impact of issuing one or more series of these securities had been considered and approved and, therefore, that the *Order Approving Financing Transactions* authorized issuance of the \$25 Par Value Stocks as the terms were described in the *Motion*.

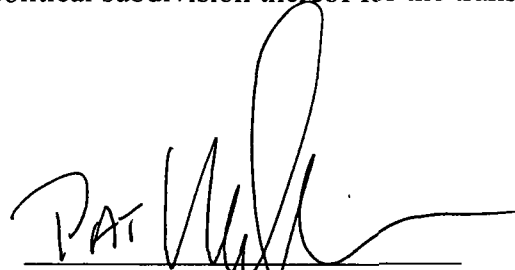
**April 18, 2005 Authority Conference**

During the Authority Conference held on April 18, 2005, the Directors found that EAI's proposed clarifications were consistent with EAI's previously approved financing plan, with the TRA's previous decision to approve that EAI plan, and with Tenn. Code Ann. § 65-4-109 (2004). Based on these findings, the Directors unanimously voted to reopen the Docket and clarify the financing authorization regarding issuance of \$25 Par Value Preferred Stock. The Directors further voted to make the approval subject to the reporting requirements approved by the Arkansas Public Service Commission and to EAI's filing copies of the reports with this Authority.

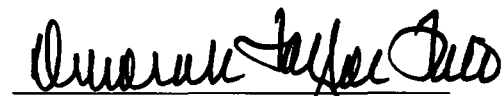
**IT IS THEREFORE ORDERED THAT:**

1. EAI's *Motion to Re-Open Docket for Clarification of Financing Authorization* is granted.
2. The financing authorizations set forth in the *Order Approving Financing Transactions*, issued on October 31, 2003 in this Docket, apply to and authorize the \$25 Par Value Preferred Stock, as its terms are proposed to be modified, as described in EAI's *Motion* and herein.
3. EAI shall file in this Docket copies of any reports that it is required to provide to the Arkansas Public Service Commission as well as copies of any petitions filed with the SEC and any subsequent order issued by the SEC related to this Docket.
4. The authorization and approval given hereby should not be used by any party, including, but not limited to, any lending party, for the purpose of inferring that an analysis or assessment of the risk involved to a purchaser of any EAI securities has been performed. Nothing

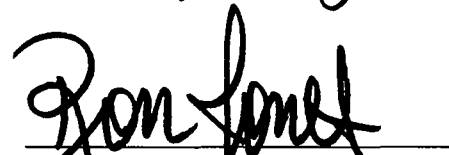
contained herein creates or is intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee, or any political subdivision thereof for the transaction approved herein.



Pat Miller, Chairman



Deborah Taylor Tate, Director



Ron Jones, Director